



Judicial Council of California

Administrative Office of the Courts

Trial Court Financial Policies and Procedures

Procedure No.
Page

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PROCUREMENT

POLICY NUMBER: AOC FIN 6.01

Original Release

April 2001

Originator:

Administrative Office of the Courts

Effective Date:

July 1, 2004

Revision Date:

July 20, 2005

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Procurement

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2.0 Purpose

The purpose of this policy is to establish uniform guidelines for the trial court to use in procuring necessary goods and services and to document that court procurement practices are fair and reasonable, and provide for economical use of public funds.

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3.0 Policy Statement

It is the policy of the trial courts that the procurement of necessary goods and services be conducted economically and expeditiously, under fair and open competition, and in accordance with sound procurement practice. All procurement actions shall be planned, implemented and administered under procurement guidelines that are clear and concise. Employees who are authorized to commit public funds are held to a high level of accountability. At a minimum, they are expected to conduct themselves with integrity, objectivity, and fairness.

4.0 Application

The procurement policies and procedures described in this policy apply to all trial court officers and employees who participate in the specification, requisition, approval, purchase, receipt, or payment for goods and services required by the trial court.

5.0 Definitions

The terms defined below apply to this policy and are for the express purpose of interpreting this policy.

1. **Audit Trail.** A series of documents that traces the movement and location of funds through an accounting system (e.g., receipt, cash collection record, deposit permit request, monthly cash settlement report).
2. **Award.** The selection of a vendor, supplier, or contractor for a procurement action.
3. **Bid.** A response to an Invitation for Bid or informal call for bids that contains an offer to provide goods and/or services at a specified price.

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4. **Blanket Purchase Order (BPO).** An arrangement under which a purchaser contracts with a vendor to provide an undetermined amount or level of goods or services for a specified period of time and up to a maximum dollar amount.

5. **California Multiple Award Schedule (CMAS).** A program created by the Department of General Services (DGS) in 1994 following the 1993 passage of AB 1727 (Polanco). The CMAS Unit establishes agreements with manufacturers and suppliers that offer products and/or services that are currently on an existing multiple award schedule with the Federal General Services Administration or other approved multiple award contract. CMAS agreements have not been competitively bid and the pricing is generally a ceiling price. Terms and conditions, and pricing should be carefully reviewed to determine if the court's requirements are met. DGS will bill the court a fee to use the CMAS contract, unless the CMAS vendor is qualified as a small business.

6. **Competitive Procurement.** The acquisition process used for procurements that exceed a suggested value of \$10,000. The process requires the solicitation of bids, quotes, or proposals (collectively, offers) from qualified providers, the evaluation of responses against predetermined criteria and the award of a purchase order or contract to the offeror that best satisfies the stated criteria and offers the trial court the best value.

7. **Conflict of Interest.** A set of circumstances (e.g., a personal or economic interest) that may prevent a trial court employee from acting in the best interest of the trial court in carrying out his or her official duties.

8. **Contract.** An agreement between two parties to perform an action in return for some consideration (compensation). The contract defines the scope, schedule, consideration, and terms and conditions which the parties agree to abide by under the agreement.

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9. **Contractor.** A person or business that enters into an agreement (a contract) to provide goods or services to another party in return for legal consideration.
10. **Fiscal Officer.** A person who provides daily oversight on how the funds are spent and managed. This oversight includes ensuring funds are budgeted, where appropriate, that they are spent according to fiscal policy, that funds are spent in alignment with the account purpose, that processes and controls are in place, that the account is reconciled on a monthly basis, and that either the expenditures are in conformity with the budget, or appropriate budget changes have been made to reflect a change in the original budget.
11. **Gratuity.** Anything offered to a public official or employee in expectation of a return for favorable consideration in business dealings.
12. **Interagency Agreement.** An agreement or transaction between two government entities, such as between a trial court and an agency of the Executive Branch.
13. **Invitation for Bid (IFB).** A solicitation document used when the goods and/or services to be purchased are very well defined, the primary decision factor is price, and an award (if any) is made without the need to communicate with bidders after bids are received.
14. **Memorandum of Understanding (MOU).** A written statement that outlines the terms of an agreement or transaction between two government entities where no funds are involved, such as the trial court and the DMV or other such entity. In the judicial branch, MOUs often include funds and because of the historic relationship between the trial court and the counties, MOUs are commonly used as the form of agreement between the trial court and the county for services, such as security services. Additionally, MOUs are used between the trial court and the AOC for specific projects where funds are involved.

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15. **Micro Purchase.** A purchase with a suggested total value of \$500 to \$2,500.
16. **Mini Purchase.** A purchase that does not exceed a suggested total value of \$500.
17. **Procurement.** The process of acquiring goods or services to support the operations of a company or public entity.
18. **Proposal.** A response to a Request for Proposals that describes the proposer's approach, scope of work, schedule and cost to provide goods or services, as well as the ability to meet other relevant criteria established by the requestor.
19. **Purchase Order (P.O.).** A form of contract used to document a purchase transaction (usually for goods). Purchase orders are numbered according to a system that allows them to be verified for control purposes, with fields that identify the quantity, price, and description of goods ordered, payment terms, discount factors, and date of delivery or performance.
20. **Quote.** An offer (written or verbal) that describes the respondent's price for goods or services to be procured. Discussions with the offeror are required to confirm the terms of the quote before an award is made.
21. **Request for Bid (RFB).** See Invitation for Bid, above.
22. **Request for Proposal (RFP).** A solicitation document used when the goods or services required are not precisely defined. Responses are judged against each other using predetermined selection criteria. The procuring party reserves the right to negotiate after the submittal of proposals, but may also make an award without discussions or negotiations. Most often used to acquire services.

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23. **Request for Quote (RFQ)** – A solicitation document used when award (if any) will be made after negotiation with the offeror. Quotations received must be discussed and confirmed to determine which one offers the best value to the court before a purchase order or contract can be awarded.
24. **Requisition.** A written or electronic request that initiates the procurement process. The requisition clearly describes the required goods or services, the quantity needed, and the schedule for delivery or performance.
25. **Sealed Bid.** A bidder's response to an IFB or RFB that is physically sealed and publicly opened with all other bids received at a specified date and time. Contract award, if any, is made to the lowest responsive, responsible bidder. Sealed bids are used when discussions with offerors are not required and award is based primarily on price.
26. **Small Purchase.** A purchase with a suggested total value greater than \$2,500 but less than \$10,000.
27. **Sole Source.** A single vendor, supplier or contractor that is able or qualified to provide a specific type of goods or services.
28. **Solicitation Document.** A document used to obtain bids, quotes, or proposals (collectively, offers) for required goods or services. The solicitation document describes the needed goods or services, the quantity or level of effort required the conditions under which work will be performed, delivery schedule and other requirements of the requestor. Instructions for the content and submittal of the solicitation response are also provided.
29. **Unsolicited Proposal.** A written proposal to supply goods or perform services that was not requested by the trial court. Unsolicited proposals are normally received in one of the following ways: (1) a bid

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solicitation is issued and a supplier that was not solicited submits a bid; or (2) a supplier, on its own initiative, offers to supply goods or perform a service for which no solicitation has been issued.

30. **Vendor.** A person or business that contracts to sell goods or services.
31. **Warrant.** An order drawn by a county officer on the treasury, directing payment of a specified amount to a specific person or entity. A warrant is similar to a bank check.

6.0 Text

6.1 Standard Procurement Process

1. The procurement process begins with the completion and submittal of a written or electronic purchase requisition to the trial court employee with approval authority for the requested goods or services. It is the responsibility of the person who completes the requisition to assure that funds are available in the court's budget and that appropriate account codes are provided for the proposed purchase.
2. Upon approval of the purchase requisition, appropriate steps are taken to obtain bids, quotes or proposals (hereinafter referred to as offers) from qualified vendors, suppliers, bidders, proposers, or contractors (hereinafter referred to as offerors). When offers are received and analyzed to select the one that offers the best value to the trial court, a purchase order or contract is used to authorize the purchase transaction, if an award is made. Receipt of the goods or services is documented prior to partial or final payment.

6.2 Standards of Conduct

1. Trial court procurement activities shall be conducted in a manner that is impartial, above reproach, and without preferential treatment. Trial court employees shall perform their duties in a manner that avoids

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even the appearance of a conflict of interest. No trial court employee shall:

- a. Have a financial interest in any procurement to which the trial court is a party.
 - b. Solicit or accept money or anything of value in addition to the compensation paid to him or her by the trial court in connection with services performed within the scope of his or her official duties.
 - c. Release information regarding any procurement that would give an unfair competitive advantage to any individual or concern.
 - d. Make any commitment or promise regarding the selection of a contractor or award of a procurement.
 - e. Use his or her position with the trial court to coerce or give the appearance of coercing another person to provide any benefit to persons to whom he or she has family, business, or financial ties.
 - f. Accept any gratuity for themselves or others from any source that seeks business or financial ties with the trial court.
 - g. Participate in the selection, award, or administration of any procurement if a conflict of interest exists or could be perceived to exist.
 - h. Participate in any actions that might result in favored treatment of prospective contractors, vendors or suppliers.
2. As stated in items b and f above, trial court employees may not accept gifts, meals or gratuities from parties that have or seek to have business or financial relationships with the court. Any such gift that is offered or received must be returned to the sender with an explanation of the court's policy regarding gifts except as specifically provided for in Rule of Court 6.102.

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6.3 Purchase Requisition and Approval

1. A written or electronic purchase requisition is used to initiate all procurement actions. The requestor identifies the correct account code(s) and verifies that budgeted funds are available for the purchase, completes the requisition form, and forwards it to the trial court employee responsible for approving the purchase, verifying that the correct account code(s) are specified, and assuring that funding is available. The purchase approval also includes verification of available funds. The following table provides **suggested** requisition approval authority levels for trial court staff and management.

Suggested Approval Thresholds for Trial Court Procurements¹

Position	Suggested Approval Threshold
Presiding Judge or Executive Committee (if applicable)	\$25,000 and above
Executive Officer	\$10,000 to \$24,999
Managers	\$2,500 to \$9,999
Supervisors	Up to \$2,500

2. Alternative procedures (e.g., approval levels that are different from those suggested above) must be documented, incorporated into the local trial court procurement manual, and distributed to court personnel. Any alternative procedure that is different from what is included in the Trial Court Financial Policies and Procedures Manual or your county's policy document, must be approved by the AOC prior to its implementation. The AOC's Internal Audit and Trial Court Fiscal Services units will review alternative procedures. Use of undocumented policies or those not approved by the AOC will not be considered valid for audit purposes.

¹ Threshold values refer to total procurement value, not individual items within a single procurement.
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6.4 Purchase Orders

1. A purchase order is a document that is issued to authorize an offeror to provide goods. Payment is made according to the terms and conditions printed on the purchase order unless otherwise specified in writing. The terms and conditions printed on a purchase order usually apply to the purchase of goods rather than services. In most cases, a contract is used to procure services.
2. Purchase orders issued by the trial court shall be numbered according to a system that allows them to be verified and prevents unauthorized purchase orders from being issued. The use of either preprinted, pre-numbered forms or computer-generated purchase order numbers is permitted.
3. Access to purchase order forms or computerized purchasing systems should be limited to a minimum number of authorized trial court employees. A purchase order log shall be kept that includes the following information:
 - a. Purchase order number.
 - b. Date issued.
 - c. Requisition no./requestor.
 - d. The vendor to whom the purchase order is to be issued.
 - e. The approximate cost of the goods or services to be purchased.
4. A copy of each purchase order issued by the trial court shall be maintained in the trial court's procurement files (refer to section 6.10, Administration and Documentation).

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6.5 Procurement Methods

1. The value of the goods and services to be purchased is an important factor in determining the procurement method that will be employed. The following table lists four **suggested** purchasing thresholds and identifies the appropriate procurement method for each one.
2. Purchase values that are different from those suggested below must be documented, incorporated into the local trial court procurement manual, and distributed to trial court personnel. Any alternative procedure that is different from what is included in the Trial Court Financial Policies and Procedures Manual or the county's policy document, must be approved by the AOC prior to its implementation. The AOC's Internal Audit and Trial Court Fiscal Services units will review alternative procedures. Use of undocumented policies or those not approved by the AOC will not be considered valid for audit purposes.

Suggested Purchasing Thresholds and Methods for Trial Court Procurements²

Suggested Purchase Value	Procurement Type	Procurement Method
Less than \$500	Mini Purchase	Purchases will be made according to good purchasing practice
\$500 to \$2,500	Micro Purchase	At least three offers must be obtained by telephone or internet and documented in writing
\$2,501 to \$10,000	Small Purchase	At least three written offers must be obtained
Greater than \$10,000	Competitive Procurement	Formal offers must be obtained

² Thresholds refer to total procurement value, not to individual items within a single procurement.

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6.5.1 Mini Purchases – Suggested Value of Less than \$500

Written offers and documentation are not required for purchases totaling less than \$500. However, good procurement practices should be followed to determine that a fair and reasonable price will be paid including:

- a. An approved purchase requisition.
- b. Timely and economical provision of goods and services to the trial court.
- c. Maximizing the benefit received by the trial court.
- d. Purchases may be completed using a check or warrant request, or purchase card. A purchase order may also be used but is not required.

6.5.2 Micro Purchases - Suggested Value \$500 to \$2,500

1. For procurements that exceed a value of \$500 but are less than \$2,500, at least three offers should be obtained from qualified offerors by telephone or through the Internet. If bids include a vendor using California Multiple Award Schedule (CMAS) pricing, then bids from at least two vendors using non-CMAS pricing must also be obtained. The telephone offers should either be documented in a log kept by the procuring employee or by fax or email from the offerors.
2. Upon receipt of at least three offers, the procurement should be awarded to the vendor who will provide the requested goods or services for the best price/value within the court's time requirements.
3. The solicitation information should be attached to the purchase requisition. Purchases of up to \$2,500 should be executed with a

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purchase order and purchases of up to \$1,500 may be executed with a purchase card or a purchase order. The court should ensure that purchases over \$500 executed with a purchase card do not require the risk mitigation afforded the court by a purchase order's terms and conditions.

6.5.3 Small Purchases – Suggested Value \$2,501 to \$10,000

1. Small purchases are defined as those with a value greater than \$2,500 and up to and including \$10,000. The procedures recognize that up to a certain limit, the cost of a competitive procurement may be greater than the value yielded by a formal competitive process. Small purchases simply require that offers be received from an adequate number of qualified vendors. Reasonable efforts shall be made to obtain at least three offers. If offers include a vendor using CMAS pricing, then offers must also be obtained from at least two vendors using non-CMAS pricing.
2. A written or electronic requisition that clearly describes the goods or services required, the quantity needed, and the schedule for delivery or performance initiates the procurement process. The requisition information should be transmitted by mail, fax, or email to a number of qualified suppliers that assures at least three offers are received. A submittal deadline and the method of submitting offers (e.g., by mail, fax, email) should also be communicated to the prospective offerors.
3. Upon receipt of at least three offers, the procurement should be awarded to the offeror who will provide the requested goods or services for the best price/value within the time required by the trial court. The procurement shall be executed with a purchase order or contract.

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4. If fewer than three offers are received, the appropriateness or reasonableness of the cost must be justified. The names and addresses of the firms or individuals solicited for bids or proposals shall be documented in the procurement file.
5. In some cases, small procurements are best executed with a contract. This is often true when the court needs to obtain services or for procurements that are considered to be complex. Complex procurements are those that require considerable and detailed explanation of the requirements and obligations of the buyer and seller. Complex procurements may also require special contract clauses that are not typically covered by the standard (and somewhat minimal) terms and conditions of a purchase order.

6.5.4 Competitive Procurements – Suggested Value Greater than \$10,000

1. For all procurements that exceed a value of \$10,000, at least three written offers must be obtained. The steps required for obtaining written offers are listed below:
 - a. Depending on the size and nature of the goods and/or services to be procured, the trial court should advertise the procurement before the contracting process begins. Publicizing procurements provides several advantages including:
 - i. Increasing competition.
 - ii. Broadening industry participation to meet trial court requirements.
 - iii. Assisting small and disadvantaged businesses in obtaining contracts and subcontracts.

The trial court can advertise competitive procurements in the California State Contracts Register (CSCR), which is published by the Department of General Services. More information may

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be obtained by logging into the CSCR advertisement submittal section of the Department of General Services Web site at www.cscr.dgs.ca.gov/cscr.

Other outlets for advertising competitive procurements include newspapers of general circulation in the county where the trial court is located, trade papers that publish announcements of upcoming government and industry procurements, and the trial court's Web site.

Advertisements for competitive procurements shall announce the availability of the solicitations, state the time and place for the receipt and opening of bids/proposals, describe the required goods/services in general terms, and provide contact information for vendors interested in responding to the solicitation.

- b. A Request for Quote, Request for Proposal, or Invitation for Bid (RFQ, RFP, or IFB) must be written that contains clear and accurate description of the material, product or service to be procured. The written specifications may not be written to unduly restrict competition.
- c. The solicitation document should state where delivery is to be made and that delivery must be included in the offer price.
- d. The solicitation document should provide a schedule for delivery of the requested material or product, or completion of the requested work.
- e. Other criteria to be used in selecting the successful offeror should also be listed (e.g., qualifications, experience, acceptance of trial court terms and conditions, inventory in stock, etc.). If the selection criteria are prioritized or weighted, that information should also be provided to the prospective offerors.
- f. The format and content required for responsive submittals must be clearly stated.

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- g. The deadline and location for submittal of offers must be clearly stated.
- h. The solicitation document should clearly state that the lowest responsible, responsive offeror (or the offeror that provides the best value to the court based on an evaluation of all offers according to the stated selection criteria) will be selected for award, if any award is made. In addition, the trial court should reserve the right to:
 - i. Reject all bids or proposals, or any parts thereof, if it is in the court's best interests to do so.
 - ii. Reject any bid or proposal that is nonresponsive to the solicitation requirements
 - iii. Reject any bid or proposal because the submitting firm or individual does not meet the trial court's stated criteria for contractor responsibility.
- i. The solicitation document should be mailed to a list of qualified offerors. If a vendor using CMAS pricing is included in the solicitation process, then a sufficient number of qualified offerors must be included to ensure that proposals from at least two vendors using non-CMAS pricing are received.
- j. Any changes to the solicitation made after it is issued should be documented and provided to all of the solicitation document holders via addenda. The addenda must be sent to all persons or entities that received a copy of the solicitation, not only those on the original mailing list. If the solicitation document is posted on a website in lieu of mailing, the addenda must also be posted on the website.
- k. All offers received prior to the submittal deadline should be opened at the time and place designated in the solicitation (only

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sealed bids need to be opened publicly). Responses to trial court solicitations (including bids, quotations, and proposals) should not be opened before the stated opening time.

- l. Document the offers received, the offer prices and the responses to any other offer criteria specified in the solicitation documents.
 - m. Evaluate the offers against the stated selection criteria to determine the responsiveness of each offer and the responsibility of each offeror.
 - n. Select an offeror from among the offers received.
 - o. For IFBs, if the lowest priced offer is not selected, document in writing why the selected offeror is the most responsible and responsive offeror.
 - p. Award the procurement, if it is in the trial court's best interest to do so, by issuing a purchase order or executing a contract agreement with the selected offeror.
2. Individuals or businesses that assist in the preparation of solicitation documents may be disqualified from submitting offers if the individual or business has a potential unfair advantage as a result of their involvement in the preparation of the solicitation.

6.5.5 Special Considerations for Sealed Bid Procurements

1. Under certain conditions, a sealed bid process may be used. Conditions that lend themselves to the use of sealed bids include:
 - a. A complete, adequate and realistic specification or purchase description.
 - b. Two or more qualified bidders who are willing to compete for the business.
 - c. The procurement lends itself to a firm, fixed price contract.

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- d. Selection can be made mainly on the basis of price.
 - e. No negotiation with the bidders is needed prior to award.
2. If a sealed bid process is used, the following additional procedures should also be followed:
- a. Instructions for submitting a sealed bid must be provided to all bidders in the IFB (e.g., "Bids must be submitted in double envelopes with the outside envelope clearly marked with the bid number and bid name").
 - b. Employees who receive and open mail should be instructed not to open sealed bids.
 - c. Stamp the unopened bid envelopes with the date and time received, and deliver them to the person designated to receive the bids.
 - d. Keep a log of the bids received.
 - e. Publicly open the bids at the place and time specified in the IFB. Announce the bidder's name and the bid amount as each bid is opened. Document the bidders responding and their bid amounts in writing.
3. Reasonable efforts shall be made to obtain at least three bids. If fewer than three bids are received, the appropriateness or reasonableness of the cost must be justified. The names and addresses of firms or individuals solicited for bids must be documented in the procurement file.

6.6 Protest Procedures

1. The trial court must process bid protests in a timely and consistent manner to assure that all prospective contractors are accorded fair and equal consideration for the award of contracts or purchase orders. Trial courts must establish protest guidelines by January 1,

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2005 that will be followed for all procurements. RFPs should include a protest procedure section that outlines the protest guidelines.

2. The trial court protest procedures must outline the process for two types of protest actions that the court will accept:
 - a. Protests based on defective specifications or improprieties.
 - b. Protests based upon award.
3. A sample Trial Court Protest Procedure is included in section 7.0, Associated Documents. The trial court may develop its own protest procedure as long as it is substantially in the form of the sample.

6.6.1 Protest Remedies

1. The Court Fiscal Officer or his or her designee will respond to a protest with a written determination.
2. For protests based on restrictive specifications or improprieties, the written determination should be provided to the protestor prior to the courts' evaluation of the proposals. If required, the proposal closing date may be extended to allow for a reasonable time to review the protest. The Court Fiscal Officer or designee's decision will be final.
3. For protests based upon award, the written determination should be provided within one week of the trial court's receipt of a timely protest. If the trial court is unable to provide a written determination within one week, the protestor should be notified. If the protest is denied, the protestor may appeal the determination.
4. In determining the appropriate remedy for an appeal, the Court Executive Officer shall consider all circumstance surrounding the procurement or proposed procurement, including the seriousness of the procurement deficiency, the degree of prejudice to other

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parties or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, the cost to the trial court, the urgency of the procurement, and the impact on the trial court. Protest remedies may include, but are not limited to, a refrain from exercising options under the awarded procurement; termination of the awarded procurement; a re-compete of the awarded procurement; issuing a new solicitation; or an award of the procurement that is consistent with statute or regulation.

6.7 Circumvention of Procurement Requirements

No procurement shall be divided in order to circumvent requirements based on purchase value thresholds. All procurements shall be made in a manner that will afford the trial court the maximum value or benefit through competitive procedures and consolidation of purchases.

6.8 Receipt of Goods and Services

To assure the implementation of strong internal controls, the receipt of goods and performance of services must be acknowledged and documented.

6.8.1 Receipt of Goods

The person receiving the procured goods indicates his or her receipt and acceptance by signing and dating the accompanying packing slip or other similar documentation. The proof of receipt and acceptance is then sent to accounts payable for processing.

6.8.2 Receipt of Services

The person managing the procured services, such as the project manager named in the contract, must provide written acknowledgement that the work associated with the invoiced amount

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has been completed and accepted. The individual responsible for monitoring the work should note on the contractor's invoice that the work has been accepted, should sign and date the invoice and send it to accounts payable for processing.

6.9 Payment

1. Invoices can be paid only if they are supported by appropriate documentation and approved by authorized trial court employees. A three-point-match of the purchase order or contract, documentation of receipt and acceptance (e.g., packing slip signed by the requestor) and the invoice constitutes appropriate documentation. The employee who requests the procurement of a good or service and initiates the purchase requisition is responsible for acknowledging and documenting the receipt of goods or completion of invoiced services, as described above. Accounts payable matches the purchase order or contract quantity and price or rate to the receipt and acceptance documentation and the invoice quantity and price or rate. The entire package, containing the purchase order or contract, documentation of receipt and acceptance, and invoice is presented to the employee who is authorized to approve payment for signature. The signed package is then returned to accounts payable for payment and filing.
2. Any discrepancies between requisitions, purchase orders or contracts, invoices, documentation of receipt and acceptance, and the actual goods or services received should be corrected before processing for payment. In addition, there must be segregation of duties among the employees involved in the procurement process. The same employee may initiate the requisition and receive the goods or services, although receipt by a second person strengthens internal controls. Unless the AOC has previously approved other procedures for the trial court, different employees must be responsible for procurement activities and payment approval.

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6.10 Administration and Documentation

1. The expenditure of public funds is subject to review or audit during and after performance to assure that the trial court “gets what it pays for.” The procurement file must stand alone to demonstrate that the procurement official and the vendor or contractor have complied with the terms of the purchase order or contract. The file must also show that any disputes have been settled according to good administrative practice and sound business judgment.
2. A properly documented procurement file for purchase orders and/or contracts provides an audit trail from the initiation of the requirement to the delivery of goods. The file provides a complete basis for informed decisions at each step of the acquisition process. A well documented file also supports the actions taken, provides information for later review and facts in the event of litigation or an investigation. Depending on the nature and value of the procurement, procurement files must contain:
 - a. Purchase requisition.
 - b. Rationale for method of procurement (quotes, sealed bid, proposal, etc.).
 - c. List of sources solicited.
 - d. Specifications, scope of work, or scope of services.
 - e. Copy of the solicitation and any amendments or addenda.
 - f. List of each offer received.
 - g. Copy of the winning offer and the offers rated second and third best.
 - h. Source selection documentation.
 - i. Internal approvals for award.
 - j. Notice of award, if applicable (may not apply to bids or quotes).

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- k. Notices to unsuccessful offerors, if applicable (may not apply to bids or quotes).
 - l. Records of protest, if any.
 - m. Required insurance documents, if applicable.
 - n. Notice to proceed (purchase order, check or warrant request).
3. In addition, contract files must contain specific information as outlined in FIN 7.03, Contract Administration.

6.11 Sole Source Procurements

1. Full and open competition is a primary goal of public procurement. Sole source procurement is a noncompetitive exception to the norm. It is accomplished by soliciting an offer from only one source under conditions that normally require the use of competitive procurement methods (see sections 6.5 and 6.7). Sole source procurement may only be used when the award is a Mini Purchase, or when competitive procurement procedures are deemed infeasible due to at least one of the following reasons:
 - a. The required product or service is only available from one source.
 - b. A public emergency does not permit the time needed for a competitive procurement.
 - c. After solicitation of a number of sources, competition is determined to be inadequate.
 - d. The contract is for legal services (i.e., legal counsel and expert witnesses representing the trial court) awarded by the trial court, which are not subject to competitive procurement requirements and may be awarded on a sole source basis.
 - e. The contract is for services that are provided by the county under a Memorandum of Understanding or for services provided by a

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State Executive Branch Agency under an Interagency Agreement (see Procedure 7.02, Memorandums of Understanding).

- f. The contract is for services received from another government agency.
2. Justification of the rationale for sole source procurements should pre-date the actual procurement, must be documented thoroughly and carefully in the event an audit or investigation is performed during or after the procurement. Documentation justifying a sole source procurement should include:
 - a. The effort made to solicit competitive bids or proposals, if any.
 - b. A summary outlining the reason for the sole source, based on the allowable exceptions set forth in paragraph 1 above.
 - c. Cost information in sufficient detail to support and justify the cost of the contract as reasonable and fair.
 - d. Cost information for similar services and differences that should be noted and explained.
 - e. Special factor affecting the cost under the contract.
 - f. An explanation of why the trial court believes the cost is appropriate.

6.12 Use of Blanket Purchase Orders

1. Blanket purchase orders (BPOs) may be used to streamline the process of filling repetitive needs for goods and services. A BPO may be established if there is a broad class of goods that is purchased (e.g., office supplies) but the exact items, quantities, and delivery requirements are not known, and/or the administrative cost of issuing numerous purchase orders can be avoided through the use of this one-time procedure.

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2. To the extent practicable, BPOs for the same types of items should be placed with more than one vendor to promote competition, assure a steady supply, and deliver the best value to the trial court.
3. The existence of a BPO or CMAS contract is not justification for procurement on a sole source basis in and of itself. Depending on the size and complexity of the procurement, appropriate procedures should be followed including obtaining offers by telephone or in writing prior to placing an order under a BPO or CMAS contract.
4. BPOs are issued on the trial court's standard purchase order form with the following additional terms and conditions:
 - a. A statement that the supplier will provide the items described in general terms, if and when requested, for a specified time period up to a specified maximum dollar amount, whichever occurs first.
 - b. A statement that the trial court is obligated only to the extent that purchases are made under the BPO. There is no guarantee that a BPO is exclusive, that a minimum number of orders will be placed, or that a minimum dollar value of goods or services will be purchased under the BPO.
 - c. Any restrictions on items that may be purchased.
 - d. A statement that sets a maximum dollar amount per order under the BPO, if desired.
5. Vendors with BPOs shall be provided with a list of the individuals authorized to make purchases under the BPO. All deliveries made under the BPO shall be accompanied by detailed packing slips or similar documentation that contains at least the:
 - a. Name of the vendor.
 - b. BPO number and release number.
 - c. Purchase date.
 - d. Itemized list of supplies or services furnished.

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- e. Quantities, unit prices, item extensions.
 - f. Delivery or shipment date.
6. Receipt and acceptance documentation (e.g., packing slips or similar documents) should be signed by the receiving employee indicating receipt and acceptance of the goods, and coded to distribute the charges to the appropriate department, program, account, etc. Packing slips or similar documentation should then be sent to accounts payable for later matching against monthly invoices.
 7. On a monthly basis, vendors with BPOs shall submit a summary invoice for all deliveries or shipments made during the preceding month, identifying the packing slips or other documentation of receipt and acceptance.
 8. A BPO is considered to be complete and closed-out when purchases placed against it equal the BPO maximum amount or when the term of the BPO expires, whichever occurs first.

6.13 Master Agreements

1. A Master agreement is used to acquire services similar to the way BPOs are used to acquire goods. They allow the trial court to obtain needed services quickly and easily, avoiding the delay and uncertainty of the competitive procurement process (master agreements themselves must be awarded using competitive procedures). Master agreements generally define the types of services to be provided and establish the rates that the provider will charge the trial court for those services.
2. Master agreements are most appropriate when the trial court has identified a recurring need for a specific type of service, but the level of effort and timing of the court's need fluctuates or is uncertain. For example, master agreements may be useful to obtain the services of

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temporary agency employees, translators, court reporters, court-appointed council, etc. To promote competition, assure availability, and deliver the best value to the trial court, master agreements for the same types of services should be placed with more than one provider.

3. The existence of a master agreement is not justification for procurement on a sole source basis in and of itself. Depending on the size and complexity of the procurement, appropriate procedures should be followed including obtaining offers from more than one service provider before authorizing work under a master agreement.
4. Master agreements can be issued using the trial court's standard terms and conditions for professional services with the addition of specific language required for a Master Agreement (see Procedure No. FIN 7.01, Contracts).
5. Service providers with master agreements shall submit invoices for all work performed no less frequently than monthly identifying the applicable work authorization, the work performed, the dates and number of hours worked, the appropriate unit prices, and the total amount due.
6. A master agreement is considered to be complete and closed-out when authorizations placed against it equal the maximum agreement amount or when the term of the agreement expires, whichever occurs first.

6.14 Use of Purchase Cards

1. Purchase cards may not be used to circumvent established procurement procedures. All procurements executed using a purchase card must be initiated by an approved purchase requisition.

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2. Purchase cards are a method of payment that work like personal credit cards and offer a number of streamlining advantages over traditional procurement methods. They also pose challenges in monitoring their use that must be addressed by the establishment of internal controls. The state-administered procurement card program, CAL-Card, is available to the trial courts. Contact AOC's Business Services Procurement Supervisor at 415 865-7978 for details.

3. Purchase cards are to be used for official court business only; personal use is prohibited. Purchase cards may be used only for the procurement of goods and services; they may not be used by trial court employees to pay for individual travel expenses. Examples of items that may be purchased using purchase cards include publications, seminar registrations, professional association dues, office supplies and equipment, etc. The use of a purchase card to pay for services may require tracking those expenditures for IRS (Form 1099 – MISC.) reporting requirements.

4. Purchase cards may only be used for purchases with a maximum of \$1,500 per transaction. A suggested daily limit of \$5,000 should also be set for purchase card use. Alternative procedures must be documented, incorporated into the local trial court manual, and distributed to court personnel. However, any alternative procedure that is different from what is included in the Trial Court Financial Policies and Procedures Manual or your county's policy document, must be approved by the AOC prior to its implementation. Alternative procedures will be reviewed by the AOC's Internal Audit and Trial Court Fiscal Services units. Use of undocumented policies or those not approved by the AOC will not be considered valid for audit purposes.

5. If purchase cardholders receive a monthly statement of activity, they are responsible for providing documentation in the form of requisitions and receipts for purchases made using the purchasing

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card. The receipts and the statement shall be forwarded to accounts payable for verification and payment.

6. If the trial court receives a monthly master statement of purchase card activity, either accounts payable or the cardholder(s) will be responsible for assembling the documentation (requisitions, receipts) necessary to verify purchases prior to issuing payment to the purchase card company.
7. If there is no receipt issued for a purchase card charge, the employee making the purchase must provide some other form of documentation for the charge. At a minimum, a written explanation for what the purchase card was used to purchase must be provided.

6.15 Use of Department of General Services Charge Card

1. The Department of General Services (DGS) charge card, also known as the blue card, may be used for official court business to obtain the following services:
 - a. To rent a vehicle for official court business from one of the seven garages operated by the Office Fleet Administration (OFA). Vehicles may be rented on a daily basis or monthly basis. OFA rates include insurance, fuel, oil, maintenance, vehicle repair costs, and roadside assistance. A fuel card is also provided for each vehicle at no additional cost.
 - b. To rent a vehicle for official court business from one of the commercial vehicle companies that has a contract with the State. Use of the DGS charge card is one of the three recognized forms of payment under the terms of the commercial vehicle rental contracts and activates the \$500,000 liability insurance coverage included in the State contract.
 - c. To pay for Yellow Cab taxi fares in Sacramento and Fresno only, in lieu of cash.

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- d. To pay for preventative maintenance services for court-owned vehicles at one of the OFA garages.
 - e. To purchase fuel at one of the OFA garages
Refer to www.ofa.dgs.ca.gov/services/garage for current lists of 1) the seven garages operated by OFA; 2) OFA vehicle rental rates; and 3) state commercial vehicle rental contractors.
2. Each Court Executive Officer designates the court employees who will be assigned a DGS charge card. Cards may be issued on either a permanent or temporary basis. Proper record keeping is required to reduce the possibility of card misuse or loss:
- a. The Court Executive Officer or his/her designee should record the employee's name, the number of each card, and the date that it is distributed.
 - b. Temporary cards should be returned to the Court Executive Officer or their designee as soon as practicable and the return date should also be documented.
 - c. Unassigned cards should be safeguarded at all times.
 - d. A lost or stolen DGS charge card should be reported immediately to the AOC Business Services Procurement Supervisor by telephone at (415) 865-7988 so it can be cancelled and a replacement issued. It is imperative that a lost or stolen card be cancelled as soon as possible. Unlike a regular credit card, the DGS charge card does not provide for a signature; so technically, anyone can use the card.
3. In February 2001, each trial court received a DGS charge card for each judicial position in the court. Based on its size, each court also received additional cards for use by court employees on official court business. The trial court may obtain additional DGS charge cards by contacting the AOC's Business Services Procurement Supervisor at (415) 865-7988.

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6.16 Limitation on Contracting with Current and Former Employees

1. As required by Rule of Court 6.103, current employees of the judicial branch are prohibited from:
 - (a) engaging in any employment, enterprise, or other activity from which the employee receives compensation or in which the employee has a financial interest; and
 - (b) engaging in any employment enterprise or other activity that is sponsored or funded by any judicial branch entity through or by a contract for goods or services for which compensation is paid, unless the activity is required as a condition of the employee's regular judicial branch employment.

2. As required by Rule of Court 6.104, a trial court may not enter into a contract for goods or services for which compensation is paid with a person previously employed by that court or by the Administrative Office of the Courts for a period of 12 months following the date of the former employee's retirement, dismissal, or separation from service, if he or she was employed in a policymaking position in the same general subject area as the proposed contract within the 12-month period before his or her retirement, dismissal, or separation; or for a period of 24 months following the date of the former employee's retirement, dismissal, or separation from service, if he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by the court or the Administrative Office of the Courts.

7.0 Associated Documents

Sample Trial Court Protest Procedures

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DRAFT SAMPLE TRIAL COURT PROTEST PROCEDURE

1. The trial court intends to be completely open and fair to all vendors in selecting the best possible service providers within budgetary and other constraints described in the solicitation document. In applying evaluation criteria and making the selection, members of the evaluation team will exercise their best judgment.

2. **Prior to Submission of Bid or Proposal.** An interested party that is an actual or prospective bidder with a direct economic interest in the procurement may file a protest based on allegedly restrictive or defective specifications or other improprieties in the solicitation process that are apparent, or should have been reasonably discovered prior to the submission of a bid or proposal. Such protest must be received prior to the date and time that proposals are due.

3. **After Award.** A vendor submitting a proposal may protest the award based on allegations of improprieties occurring during the proposal evaluation or award period if it meets all of the following conditions:
 - a. The vendor has submitted a proposal that it believes to be responsive to the solicitation document.
 - b. The vendor believes that its proposal meets the trial court's administrative requirements and technical requirements, proposes items and/or service of proven quality and performance, and offers a competitive cost to the trial court; and
 - c. The vendor believes that the trial court has incorrectly selected another vendor submitting a proposal for an award.

Such protest must be received no later than five (5) business days after the protesting party knows or should have known of the facts and circumstances upon which the protest is based.

4. In no event shall a protest be considered if all submittals are rejected or after a contract has been executed.

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5. **Form of Protest.** A vendor who is qualified to protest should contact the [insert the title of the person accepting protests] at the address provided below:

[Title]
Name
Street Address and Room #
City, State and Zip Code]

- a. The protest must be in writing and sent by certified or registered mail or delivered personally to the address listed above. If the protest is hand-delivered, a receipt must be requested.
 - b. The protest shall include the name, address, telephone and facsimile numbers of the party protesting or their representative.
 - c. The title of the solicitation document under which the protest is submitted shall be included.
 - d. A detailed description of the specific legal and factual grounds of protest and any supporting documentation shall be included.
 - e. The specific ruling or relief requested must be stated.
6. The trial court, at its discretion, may make a decision regarding the protest without requesting further documents from the protestor. Therefore, the initial protest submittal must include all grounds for the protest and all evidence available at the time the protest is submitted. If the protestor later raises new grounds or evidence that was not included in the initial protest but which could have been raised at that time, the trial court will not consider such new grounds or new evidence.
7. **Determination of Protest Submitted Prior to Submission of Bid or Proposal.** Upon receipt of a timely and proper protest based on allegedly restrictive or defective specifications or other improprieties in the solicitation process that are apparent, or should have been

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reasonably discovered prior to the submission of a bid or proposal, the trial court will provide a written determination to the protestor prior to the proposal closing date. If required, the proposal closing date may be extended to allow for a reasonable time to review the protest. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below and the court, at its sole discretion, may elect to withhold the contract award until the protest is resolved or denied or proceed with the award and implementation of the contract.

8. **Determination of Protest Submitted After Submission of Bid or Proposal.** Upon receipt of a timely and proper protest, the trial court will investigate the protest and will provide a written response to the vendor within a reasonable time. If the trial court requires additional time to review the protest and is not able to provide a response within ten (10) business days, the trial court will notify the vendor. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below and the court, at its sole discretion, may elect to withhold the contract award until the protest is resolve or denied or proceed with the award and implementation of the contract.

9. **Appeals Process.** The [insert the title of the person listed above]'s decision shall be considered the final action by the trial court unless the protesting firm thereafter seeks an appeal of the [insert the title of the person listed above]'s decision by filing a request for appeal with the [insert the title of the person that is the second tier for protests] within five (5) calendar days of the issuance of the [insert the title of the person listed above]'s decision. The justification for appeal is limited to: facts and/or information related to the protest, as previously submitted, that was not available at the time the protest was originally submitted; or (2) the decision of [insert the title of the person listed in 5 above] was in error of law or regulation. The request for appeal shall include: (1) the name, address, telephone and facsimile numbers of the vendor filing the

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appeal or their representative; (2) a copy of the trial court's decision; and (3) the legal and factual basis for the appeal and the ruling or relief requested. Issues that could have been raised earlier will not be considered on appeal. Upon receipt of a request for appeal, the [insert the title of the person that is the second tier for protests] or his/her designee will review the request and the decision of the [insert the title of the person listed in 5 above] and shall issue a final determination. The decision of the [insert the title of the person that is the second tier for protests] shall constitute the final action of the trial court.

10. **Protest Remedies:** If the protest is upheld, the court will consider all circumstances surrounding the procurement in its decision for a fair and reasonable remedy, including the seriousness of the procurement deficiency, the degree of prejudice to the protesting party or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, the cost to the court, the urgency of the procurement, and the impact of the recommendation(s) on the court. The court may recommend any combination of the following remedies:
 - (a) Terminate the contract for convenience;
 - (b) Re-compete the contract;
 - (c) Issue a new solicitation;
 - (d) Refrain from exercising options to extend the term under the contract;
 - (e) Award a contract consistent with statute or regulation; or
 - (f) Other such remedies as may be required to promote compliance.
11. Failure of the bidder to comply with these protest procedures will render a protest untimely and inadequate and may result in rejection thereof by the trial court.